

STATE OF MICHIGAN
COURT OF APPEALS

AFSCME MICHIGAN COUNCIL 25,

Petitioner-Appellee,

v

CIVIL SERVICE COMMISSION and
DEPARTMENT OF CORRECTIONS,

Respondents-Appellants.

UNPUBLISHED
November 18, 2003

No. 242235
Ingham Circuit Court
LC No. 01-093677-AA

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Respondents appeal by leave granted the circuit court order vacating the decision of the Civil Service Commission and reinstating an arbitrator's decision. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner grieved the dismissal of a Department of Corrections employee, and the department asserted that its action was not subject to the grievance procedure because the employee was probationary. Petitioner submitted the matter to arbitration, and the arbitrator determined that the matter was subject to arbitration. Petitioner filed a complaint with the State Personnel Director, who determined that the matter involved a prohibited subject of bargaining. The Civil Service Commission adopted the decision of the State Personnel Director and vacated the arbitrator's award. The circuit court reversed, finding that the employee was not probationary.

This Court's review of a circuit court's decision regarding an administrative action is limited to a determination of "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to an agency's factual findings." *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

The question to be determined by the circuit court was not whether the employee was still in probationary status, but who was authorized to make that decision. The Collective Bargaining Agreement gives the Civil Service Commission exclusive jurisdiction to determine if an arbitrator's decision violates a civil service policy governing a prohibited subject of bargaining. Civil Service Rule 6-9.10 also gives the commission exclusive jurisdiction to determine if an arbitrator's decision violates a civil service policy governing a prohibited subject of bargaining. The Civil Service Commission found that the arbitrator's decision involved a prohibited subject

of bargaining, and there is no basis for reinstating the arbitrator's decision in contradiction to the commission.

Reversed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter